

Honorable Judge Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOMBARDIER INC.,

Plaintiff,

v.

MITSUBISHI AIRCRAFT CORPORATION,  
MITSUBISHI AIRCRAFT CORPORATION  
AMERICA INC., AEROSPACE TESTING  
ENGINEERING & CERTIFICATION INC.,  
MICHEL KORWIN-SZYMANOWSKI,  
LAURUS BASSON, MARC-ANTOINE  
DELARCHE, CINDY DORNÉVAL, KEITH  
AYRE, AND JOHN AND/OR JANE DOES 1-  
88,

Defendants.

No. 2:18-cv-01543-RAJ

DECLARATION OF JOHN D.  
DENKENBERGER IN SUPPORT  
OF BOMBARDIER INC.'S REPLY  
TO MITSUBISHI AIRCRAFT  
CORPORATION AMERICA  
INC.'S OPPOSITION TO  
MOTION TO SEAL EXHIBITS A-  
J TO THE DECLARATION OF  
DANIEL BURNS AND EXHIBIT  
A TO THE DECLARATION OF  
DAVID TIDD IN SUPPORT OF  
ITS MOTION FOR A  
PRELIMINARY INJUNCTION

I, John D. Denkenberger, declare as follows:

1. I am an attorney with the law firm of Christensen O'Connor Johnson Kindness PLLC ("COJK") and counsel of record for Plaintiff Bombardier Inc. ("Plaintiff" or "Bombardier"). I have personal knowledge of the matters addressed herein. This declaration is being submitted in support of Bombardier Inc.'s Reply to Mitsubishi Aircraft Corporation America Inc.'s Opposition to Bombardier Inc.'s Motion to Seal Exhibits A-J to the Declaration of Daniel Burns and Exhibit A to the Declaration of David Tidd in Support of its Motion for a Preliminary Injunction (Dkt. No. 3) ("Motion").

1           2.       On October 19, 2018, Bombardier initiated this lawsuit against the named  
2 defendants by filing in relevant part its Complaint, a Motion for Preliminary Injunction, and a  
3 Motion to Seal certain documents supporting Bombardier's Motion for Preliminary Injunction  
4 that contain highly proprietary Bombardier trade secret information. Because of the  
5 protracted nature of pre-filing discussions between principal parties that ultimately could not  
6 obviate the need for litigation, and given the exigencies described in Bombardier's Motion for  
7 Preliminary Injunction, the need to expedite these proceedings—particularly those related to  
8 the preliminary injunctive relief Bombardier seeks—was paramount. As such, Bombardier  
9 initially noted its Motion to Seal for November 2, 2018, and its Motion for Preliminary  
10 Injunction for November 16, 2018, to comply with the Court's local rules regarding "two-  
11 Friday" and "four-Friday" motions, respectively. Bombardier appreciated, however, that  
12 these dates would be re-noted by necessity. No counsel of record would appear immediately,  
13 service would take time to perfect, and the parties would require sufficient notice to  
14 adequately prepare its positions with respect to Bombardier's two pending motions. In light  
15 of the foregoing, and as explained in more detail below, I made it a point to convey in my  
16 conversations with defendants' counsel (as respective notices of appearance were filed)  
17 Bombardier's willingness to accommodate reasonable requests from counsel to re-note either  
18 or both of the pending motions.

19           3.       Also on October 19, 2018, I had a telephone call with Jerry Riedinger, now  
20 counsel of record for Mitsubishi Aircraft Corporation America Inc. ("MITAC America"),  
21 shortly after this litigation had been initiated. During that call, I had sought confirmation as to  
22 whether he would be representing MITAC America and its corporate parent, Mitsubishi  
23 Aircraft Corporation ("MITAC"), in the litigation. Mr. Riedinger had represented MITAC  
24 and MITAC America during certain pre-filing discussions held between Bombardier and  
25 MITAC in September, and so I thought confirmation was appropriate and required. In  
26 response, Mr. Riedinger stated that while both MITAC entities were current clients, he was  
27 not sure whether he would be representing either MITAC entity in the litigation.

1           4.       During this same call, I informed Mr. Riedinger that I would make available to  
2 him in his capacity as counsel for both MITAC and MITAC America copies of the documents  
3 filed under seal on the condition that he not share the documents with his clients. After some  
4 discussion on the topic, I followed up with an email, a true and correct copy of which is  
5 attached hereto as Exhibit A. In that email, I stated in part that we “are willing to share the  
6 documents with Perkins in your capacity as counsel for MITAC and MITAC America in this  
7 litigation but only with the understanding that you will treat them as ‘ATTORNEYS EYES  
8 ONLY.’” I further stated in that email, “in the event that you perceive a need to share these  
9 documents with anyone other than Perkins’ personnel, I request that you do so only with prior  
10 permission from us or the Court.”

11           5.       On October 26, 2018, I had another telephone conversation with Mr.  
12 Riedinger. We had arranged earlier that day by email to speak at 3:00 pm, and the topics to  
13 be covered included scheduling the date by which an answer to the Complaint would be due,  
14 the schedule for Bombardier’s Motion for Preliminary Injunction, the documents filed under  
15 seal and Bombardier’s Motion to Seal, and other matters. We covered these and other issues  
16 during our call, and I expressed unequivocally that we were willing to work with counsel to  
17 accommodate and reset all currently noted dates, including the noting date for the Motion for  
18 Preliminary Injunction as well as the Motion to Seal. I explained that we were not taking an  
19 approach in this litigation that would deprive any defendant a full and fair opportunity to  
20 prepare its positions for either of Bombardier’s pending motions. For his part, Mr. Riedinger  
21 volunteered during the call that it was very unlikely that he or Perkins Coie LLP would be  
22 representing any individually named defendant in the litigation. Further, he stated that while  
23 he is acting as counsel in the litigation for his client MITAC America, he had not been  
24 retained to represent MITAC in the litigation.

25           6.       On October 29, 2018, Mr. Riedinger sent an email stating, “You suggested  
26 over the weekend that we could review the documents filed under seal to help us determine  
27 our position on Bombardier’s Motion to Seal. We would like to conduct that review. Please

1 understand that by agreeing to review the documents, we are not agreeing to take any position  
2 on the Motion, nor are we waiving our right to require proper service for purposes of an  
3 appropriate noting date. Our position will be decided after we have a chance to review the  
4 documents.” A copy of that email is attached hereto as Exhibit B.

5 7. Attached hereto as Exhibit C is a true and correct copy of the written exchange  
6 between counsel prompted by Mr. Riedinger’s email of October 29, 2018, described above.  
7 In relevant part, Mr. Brian McMahon, counsel for Bombardier, made clear that he would  
8 reserve a conference room for counsel’s review for a period of two hours, “unless [counsel]  
9 need[ed] more time”; that Bombardier had no objection to Mr. Riedinger’s request to have  
10 two Perkins Coie attorneys conduct the review; and that Mr. Riedinger’s request to take notes  
11 was “fine, so long as the notes themselves or their substance will not be shared with anyone  
12 beyond Perkins Coie attorneys.” Mr. Riedinger objected to that constraint, but he  
13 nevertheless conducted the review with Ms. Mary Gaston, co-counsel of record for MITAC  
14 America, without taking notes.

15 8. On October 30, 2018, Mr. Riedinger and Ms. Gaston visited the offices of  
16 COJK to conduct their review of the documents subject to Bombardier’s Motion to Seal. On  
17 that same day, in response to counsel’s request to re-note the date for Bombardier’s Motion to  
18 Seal, I authorized the filing of Bombardier’s notice to re-note the Motion to Seal to November  
19 9, 2018, Dkt. No. 22.

20 9. On November 5, 2018, Mr. Riedinger on behalf of MITAC America requested  
21 a teleconference to discuss the possibility of adjusting the noting date for Bombardier’s  
22 preliminary injunction motion. Specifically, he requested a call that afternoon. I responded  
23 by stating that I was not available that afternoon, but I suggested a call for the following  
24 morning at 10:00 a.m. I also included Mr. Mark Bailey, then-counsel of record for only  
25 Aerospace Testing Engineering & Certification Inc. (“AeroTEC”), in the distribution of my  
26 response email. I suggested to Mr. Riedinger that it made sense for all counsel of record to  
27 participate in the call. I also agreed in that email to re-note the date for the Motion for

1 Preliminary Injunction at MITAC America's request, with the precise date of re-noting to be  
2 discussed during the call set for the following day.

3 10. On November 6, 2018, I participated in that telephone conference along with  
4 Brian McMahon for Bombardier; Jerry Riedinger and Mary Gaston for MITAC America; and  
5 Mark Bailey and Richard Omata for AeroTEC. The call was brief due to some counsel's  
6 limited availability that morning, but the topics of discussion included whether the parties  
7 could agree to terms limiting the availability and distribution of the sealed exhibits once  
8 Defendants' counsel received copies of the same. Mr. McMahon explained that he was  
9 working on a draft proposed protective order, and he would circulate it later that afternoon.  
10 All counsel agreed to reconvene the teleconference the following morning to discuss, among  
11 other issues, the proposed protective order. At no time during the call did counsel for any  
12 defendant raise procedural or substantive issues related to Bombardier's Motion to Seal.

13 11. The following morning, on November 7, 2018, all counsel present for the  
14 November 6, 2018 call participated in the follow-up call. Mr. McMahon had circulated the  
15 draft proposed protective order, a true and correct copy of which is attached hereto as Exhibit  
16 D. I arrived a few minutes after the call had already started, and Mr. McMahon summarized  
17 for me during the call some of the talking points that had been covered prior to my arrival.  
18 Among those topics, I am informed, was that counsel for AeroTEC mentioned a need for the  
19 individual defendants to see the sealed documents to determine whether the documents were  
20 in fact confidential and proprietary, whether they had seen those documents before, and  
21 whether, in certain cases, they actually had copies of the documents as alleged in  
22 Bombardier's Complaint. I understand that Mr. McMahon had responded to counsel's  
23 concern prior to my arrival by stating that the position made sense, and that Bombardier was  
24 certainly willing to consider a proposed revision from AeroTEC's counsel to accommodate  
25 that concern. Prior to the conclusion of the call, AeroTEC's counsel committed to proposing  
26 such a revision in writing. Further, MITAC America's counsel also stated that it would work  
27

1 on circulating an “interim” protective order that would have applicability only with respect to  
2 briefing the Motion for Preliminary Injunction.

3 12. Also during this call, in an effort to make progress on what I believed to be a  
4 relatively simple matter, I asked whether all counsel could stipulate to Bombardier’s Motion  
5 to Seal. I further clarified that this would not be construed as an admission on any  
6 defendants’ part that the documents contained trade secret information. My request was met  
7 by a topic change. At no time, however, did any of defendants’ counsel raise any issue—  
8 procedural or otherwise—related to Bombardier’s Motion to Seal. Defendants’ counsel even  
9 raised no issue when, upon concluding the call, I asked each party represented whether there  
10 were any other outstanding issues to address.

11 13. Later that same day, I received ECF notification of MITAC America’s  
12 Opposition to Bombardier’s Motion to Seal.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Dated this 9th day of November, 2018.

15  
16 CHRISTENSEN O’CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>

17  
18  
19 s/ John D. Denkenberger

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25  
26  
27

**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jerry A. Riedinger PERKINS COIE LLP Email: JRiedinger@perkinscoie.com docketsea@perkinscoie.com lshaw@perkinscoie.com sporter@perkinscoie.com	Mack H. Shultz PERKINS COIE LLP Email: MShultz@perkinscoie.com docketseapl@perkinscoie.com sbilger@perkinscoie.com	Mary Z. Gaston PERKINS COIE LLP Email: MGaston@perkinscoie.com docketsea@perkinscoie.com jstarr@perkinscoie.com
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Attorneys for Aerospace Testing Engineering & Certification Inc., Michel Korwin-Szymanowski, Laurus Basson, and Cindy Dornéval

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